

### **REMARKS**

This paper is submitted in response to the non-final office action dated November 21, 2008 and is accompanied by a petition for a one-month extension of time.

In the office action, (a) the drawings were objected to for failing to comply with 37 CFR 1.84(p)(4); (b) claims 8, 9, 12, 23, 27, and 36 were objected to for reciting various informalities; (c) claims 1, 8, 9, 13, 17-22, 24-26, 28, 31-38, 40-48, 51, and 52 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite; (d) claims 1-40 and 49-52 were rejected under 35 U.S.C. §103(a) as allegedly obvious over Wipf (U.S. 6,591,963) in view of EPO '820 (EP 1295820) and further in view of at least one of Picket et al. (USPN 6354427), Santais et al. (USPN 5863571), Clopton (USPN 5076422), Leemkuil (USPN 5191959), Zurcher (US Pub 2002/0053499 A1), Steeber et al. (USPN 6230874), Barth et al. (USPN 6394260), and Fellner et al. (USPN 4513858); and (e) claim 17, 18, 21, 22, 31, 32, 35, 40, and 52 were indicated as allowable if rewritten to overcome the rejections under 35 U.S.C. §112, and to include all the limitations of the base claim and any intervening claims.

At present, claims 1-52 are pending, of which claims 1-50 and 52 are amended herein. No new matter has been added.

Each of the foregoing objections/rejections will now be addressed in the order in which they were set forth in the office action.

### **DRAWING OBJECTIONS**

Applicant submits that the drawings of the application designate the depicted features with correct reference characters. The specification, however, is amended herein to correct various typographical errors related to the objections set forth in the office action. Specifically, paragraph [0042] of the specification is amended to consistently refer to the "carriage" with reference character "2." Paragraph [0055] of the specification is amended to consistently refer to the "guide roller" with reference character "25'." Paragraphs [0082] and [0083] are amended to consistently refer to the "two guide rollers" with reference character "73."

Reconsideration and withdrawal of the drawing objections are therefore respectfully requested.

### **CLAIM OBJECTIONS**

Claims 8, 9, 12, 23, 27, and 36 are amended herein to remedy the antecedent basis issues identified in the office action.

Reconsideration and withdrawal of the claim objections are therefore respectfully requested.

### **REJECTIONS UNDER 35 U.S.C. §112**

Claims 1, 4, 17-20, 22, 28, 31-35, 38, and 40 stand rejected as indefinite under 35 U.S.C. §112, second paragraph, because they recite phrases such as “can be” and/or “adapted to.” Additionally, claims 21 and 25 stand rejected for reciting “which allows pivoting.” Further still, claims 13, 24, 37, 38, 51, and 52 stand rejected under 35 U.S.C. §112, second paragraph, because they expressly recite alternatives.

Applicant respectfully traverses these rejections.

Alternative phrases such as “can be” and “or”, as well as functional phrases such as “adapted to” and “which allows,” are perfectly acceptable under U.S. patent practice. In fact, MPEP 2173.01 expressly states that an applicant “may use functional language, [and/or] alternative expressions ...” in defining his/her invention.

Still further, under 35 U.S.C. §112, second paragraph, claims 8, 9, 26, 36, and 41-48 stand rejected. Each of these claims are amended herein to clarify the subject matter thereof.

Reconsideration and withdrawal of the outstanding rejections under 35 U.S.C. §112, second paragraph, is respectfully requested.

### **REJECTIONS UNDER 35 U.S.C. §103**

Independent claim 1 stands rejected under 35 U.S.C. §103(a) as obvious over Wipf in view of EPO ‘820. Applicants respectfully traverse this rejection.

A person skilled in the art would not be prompted to combine the respective teachings of Wipf and EPO ‘820 to arrive at the subject-matter of claim 1. Moreover, any combination

of Wipf and '820 could not solve the underlying technical problem solved by the present invention, which is namely to provide a dynamic storage device suitable for the rapid transport of objects with low resistance of tipping, such as empty plastic bottles.

Wipf describes a system for the dynamic storage of flat transport piece goods G on a conveying belt 1 upon a carriage 2 and a carrier frame 3, and which is deflected by deflecting rollers 21, 21'. EPO '820 discloses a belt-type conveying means 15a-d, which is deflected by pulleys 16a-d, 17a-d, and which is provided with lateral grippers 20 for gripping bottles 21. When the belt-type conveying means 15a-d is being deflected by the pulleys 16a-d, 17a-d, the grippers 20 are arranged at an outer side of the conveying means 15a-d and the bottles 21 occupy a hanging position.

Thus, if the conveying belt 1 and deflecting rollers 21, 21' of Wipf were replaced by or modified to include the grippers 20, the belt-type conveying means 15a-15d, and/or pulleys 16a-d, 17a-d of EPO '820, the bottles 21 would inevitably interfere with the carriage 2 and carrier frame 3 of Wipf. In other words, any bottles 21 hanging from the grippers 20 would impact the carriage 2 and stop the conveyor system, thereby rendering the device of Wipf inoperable. As such, common sense dictates that the teachings of these two references cannot be combined in a successful manner.

Therefore, the rejection of claim 1 as being obvious must be withdrawn. Moreover, the obviousness rejections of claim 2-27, 40, and 49-51 should also be withdrawn as these claims depend, either directly or indirectly, from claim 1.

Independent claim 28 stands rejected under 35 U.S.C. §103(a) as obvious over Wipf in view of EPO '820, Clopton, and either Leemkuil or Zurcher. Applicants respectfully traverse this rejection.

For the same reasons set forth above, the rejection of claim 28 as obvious over Wipf and EPO '820 is improper because common sense dictates that Wipf and EPO '820 cannot be combined. Moreover, regarding Leemkuil, Applicants respectfully disagree with the examiner's characterization that it discloses a guide roller arranged in a movable manner on a respective chain link. In contrast, Leemkuil discloses a pair of parallel spaced chains 12, which are not described in detail, connected by cross tubes 14. The movable rollers 35 are

part of pushers 15 and they guide the pushers 15 when moved along the cross tubes 14. Thus, the movable rollers 35 are not part of the chain links at all. Furthermore, they serve a completely different purpose, as compared to the guide rollers of the invention.

As such, the rejection of claim 28 as being obvious must be withdrawn. Moreover, the obviousness rejections of claim 29-39 and 52 should also be withdrawn as these claims depend, either directly or indirectly, from claim 1.

### CONCLUSION

In view of the foregoing, Applicants believe that all outstanding objections, rejections, and/or other concerns have been either accommodated, traversed, or rendered moot. Therefore, the application should be in condition for allowance. If there is any outstanding issue that the examiner believes may be remedied via telephone conference, the examiner is invited to telephone the undersigned at (312) 474-6300.

Dated: March 20, 2009

Respectfully submitted,

By



Michael P. Furmanek

Registration No.: 58,495

MARSHALL, GERSTEIN & BORUN

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant